IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1449 OF 2003
IN
SUIT NO.1388 OF 2003

Shopper's Delight Pvt. Ltd. ...Plaintiff

Vs.

Lake View Developers & Ors. ...Defendants

Mr.P.Sakseria i/b. M/s. Bilawala & Co. for Plaintiff

Mr. P.K.Shroff with Mr. Subodh Joshi for Defendants 1 to 5

Mr. B. Colabawala i/b. M/s. Kanga & Co. for Defendant 6

CORAM: SMT. R.S.DALVI,J.
DATE: 8TH JULY, 2005.

P.C.

1. This suit is filed for specific performance of an agreement for sale of the suit premises being a commercial premises on the ground floor of building Titus at Hiranandani gardens, Pawai, Mumbai, admeasuring 7500 sq.ft. Built up area and for other incidental reliefs specially of injunction against its sale and disposal.

2. The Plaintiffs have purchased two premises from

the first Defendants in two buildings adjoining one another. One being Titus and the other being Zenta (later named Spectra).

3. There is no dispute between the Plaintiff and Defendant No.1 with regard to their agreement for the commercial premises in the building Zenta. Defendant No.1 disputes any agreement with the Plaintiff in respect of the suit premises in Titus.

4. The Plaintiffs claim an agreement to have been executed between the parties for the suit premises as per the first Defendant's letter dated 2nd August, 2001 addressed to the Plaintiff, **Exhibit-B** to the Plaint. The Plaintiffs have also relied upon a similar letter addressed by the first Defendants to the Plaintiffs dated 3rd August, 2001 **Exhibit-C** to the Plaint which in respect of the premises in Zenta.

5. It must first be seen whether or not the letter dated 2nd August, 2001, Exhibit-B to the Plaint constitutes an agreement between the parties which can be specifically enforced. The letter is signed by the Defendants and not the Plaintiffs. The terms are not even confirmed by the Plaintiffs. The letter shows that it is further to the Plaintiffs'

confirmation and the token amount of Rs.5,00,000/- received towards the premises described in the letter. The description of the premises runs thus:-

> "Commercial premises on the ground floor admeasuring 7500 sq. ft. in the building Titus at Hiranandani Gardens Pawai, Mumbai"

The specific dimensions of the premises is not given. No plan showing the specified premises is shown annexed or signed by the parties.

6. The description of the premises set out in the letter aside from the above shows the rate of Rs.4000/- per sq. ft. total consideration of Rs.3 crores, advance paid of Rs.5 lacs and balance payable of Rs.2.95 crores.

7. Thereafter the letter mentions certain confirmation about the cost of additional six covered car parks in Zenta for Rs.9 lacs (with which this suit is not concerned). The letter further mentions about additional car parks other than those 6 car parks with their proposed consideration amount.

8. A mere letter addressed by one party to another

showing a token amount received without specified dimensions of any specified property to be sold or purchased cannot amount to any agreement of sale for such property.

9. The Plaintiffs have relied upon the other letter sent to the Plaintiffs by the first Defendants a day thereafter with regard to the premises in Zenta. That letter is not similar to the letter dated 2nd August, 2001, Exhibit-B to the Plaint. The letter dated 3rd August, 2001, Exhibit-C to the Plaint makes a specific mention of the signing of the Memorandum of Understanding (MOU) it specifies that 10% has tobe paid on the signing of the MOU the exact consideration of Rs.41.8 lacs. As shown against the amount of 10% payable at the time of signing of the MOU the cost of 6 covered car parks (the details of which are given in the letter dated 2nd August, 2001, Exhibit-B to the Plaint is shown to be Rs.9 lacs.) the token amount paid for that premises is shown to be Rs.10 lacs., and hence, the net balance amount payable on the signing of the MOU is shown to be Rs.40.8 lacs.

10. It must be mentioned here that there is no mention of execution of any MOU in the letter dated 2nd August,

2001.

11. The parties have followed up the said letter by the execution of the MOU on 3rd August, 2001 itself in respect of the premises in Zenta. The MOU marked Exhibit-D to the Plaint is a detailed document setting out the rights and entitlements of the parties with regard to that premises in terms of the letter dated 3rd August, 2001. Under the said MOU the total consideration paid on 3rd August, 2001 is shown to be Rs.50.8 lacs. (and not Rs.40.8 lacs) as shown in the letter dated 3rd August, 2001, Exhibit-C to the Plaint. This appears to take into account the token amount of Rs.10 lacs paid earlier. The MOU has several plans annexed thereto showing the construction of the building Zenta and the specified terms agreed to be purchased by the Plaintiffs in Zenta.

12. The parties have followed up their transaction with regard to the premises to be sold to the Plaintiffs in Zenta still further. The Plaintiffs have obtained the certificate under Section 269 UL(3)of the Income Tax Act, 1961 for that premises. The certificate is also a part of the Exhibit-D to the Plaint. It can be seen that only for one of the two

premises the parties have entered into MOU and obtained a certificate which at that time was mandatory, statutory requirement. Had the parties entered into another agreement on a day prior to that agreement, they were expected to enter into another similar MOU showing similar rights and entitlements of the Plaintiffs to any specified premises followed by the Plaintiffs' act of obtaining the statutory certificate under the Income Tax Act with regard to that property also.

13. Taking that transaction with regard to the premises in Zenta further, the Plaintiffs paid stamp duty of Rs.7403/- and executed the agreement for sale on 29th March, 2003, marked Exhibit-G to the Plaint.

14. Similarly the Plaintiffs got their MOU with regard to the premises with Zenta registered (The MOU Exhibit-D to the Plaint is on a Stamp paper bearing No.10199 issued to the First Defendants on 24th July, 2001 whereas the Stamp paper of the registered MOU Exhibit-E to the Plaint bears No.10197 issued to the First Defendants on 24th July, 2001. The initials of the parties in the MOU Exhibit-D to the Plaint are in the margin whereas in the MOU Exhibit-E to

the Plaint the initials are in the margin along with two other initials at the foot of every page.)

15. A similar exercise for Titus never took place.

16. As late as on 19th March, 2002 the first Defendant's Officer sent a E-mail to the Plaintiff's Officer under the subject "completion issued on Zenta show-room" stating that they were in the process of finalising the additional area of approximately 14250 -b of show-room area of Titus to the Plaintiffs. The E-mail shows a special note that finalising the additional area of Titus would be purely dependent on the response of that E-mail. The E-mail marked most urgent specifically requested a reply.

17. This E-mail shows that there was no finalisation of the area for the building Titus between the parties until as late as March, 2002. In fact it mentions about the additional area which was being considered. It is surprising that the Plaintiffs have relied upon this E-mail to show a finalisation of the transaction. It shows quite the reverse.

18. It is surprising that to obtain specific performance of one agreement, the Plaintiffs have annexed the documents entered into by them with the First Defendants with regard

to another premises. The document Exhibit-B to the Plaint does not constitute a completed agreement between the parties which can be specifically enforced.

19. Aside from the statutory averment of readiness and willingness, the Plaintiffs have not shown any such readiness and willingness to execute that agreement either by way of calling upon the first Defendants to enter into any MOU, or by offering the consideration agreed upon. The Plaintiffs have not even replied the E-mail of the Defendants. The discretionary reliefs of specific performance cannot be availed by the Plaintiffs. Consequently the relief of Injunction cannot be granted. Hence, the following order.

O R D E R

1. **Notice of Motion is dismissed.**

2. N.O.C.

3. The ad-interim order shall continue for three weeks.

(SMT.R.S.DALVI,J.)